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May 7, 2013

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Honorable Justice Kenneth M. Karas
United States District Court
Southern District of New York
Federal Building and United States Courthouse
300 Quarropas St., Chambers 533
White Plains, NY 10601-4150

Re: Jeffrey Deskovic v. City of Peekskill, et al.
07-CV-8150(KMK)
Linda McGarr v. City of Peekskill, et al.
07-CV-9488(KMK)

Dear Honorable Sir:

The undersigned represents Intervenor-Plaintiff, New York Municipal Insurance Reciprocal (NYMIR) in connection with the above actions¹. In accordance with Your Honor's Order dated April 18, 2013, on April 30, 2013 NYMIR filed its intervening Complaint which seeks a declaration that it is no longer obligated to defend or indemnify its insureds, County of Putnam ("County") and Daniel Stephens ("Stephens"), in the above actions (the "*NYMIR DJ Action*"). Service upon all defendants in the *NYMIR DJ Action* was made on or before May 4, 2013.

Upon receipt of responsive pleadings from the defendants in the *NYMIR DJ Action*, or the expiration of the statutory time to serve such pleadings, NYMIR would like to immediately move for Summary Judgment. It is NYMIR's belief that no further discovery is necessary for this Court to decide the issues raised in the *NYMIR DJ Action*. The basis of NYMIR's argument in the *NYMIR*

¹ *Jeffrey Deskovic v. City of Peekskill, Putnam County, Westchester County, David Levine, Thomas McIntyre, Walter Brovarski, Eugene Tumolo, John and Jane Doe Supervisors, Daniel Stephens, Louis Roh, Millard Hyland and Alan Tweed* (hereinafter "the *Deskovic Action*" or "*Deskovic Complaint*"). 07-CV-8150(KMK).

Linda McGarr v. City of Peekskill, Westchester County, David Levine, Thomas McIntyre, Walter Brovarski, Eugene Tumolo, John and Jane Doe Supervisors, Daniel Stephens, Louis Roh and Millard (hereinafter "the *McGarr Action*"). 07-CV-09488 (KMK).

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DJ Action is essentially the same as the argument raised by the primary carrier defendants in the third-party declaratory judgment action commenced by the City of Peekskill (the "*City of Peekskill Third-Party DJ Action*") and on which argument was heard by Your Honor on April 30, 2013. In brief, as with the primary carrier defendants in the *City of Peekskill Third-Party DJ Action*, NYMIR's position is that all triggering dates for coverage occurred prior to the inception of the January 1, 1995 to January 1, 1996 NYMIR Municipal Law Enforcement Liability policy issued to the County.

We are aware that Your Honor has recently set a briefing schedule for summary judgment motions in the *City Of Peekskill Third-Party DJ Action* with opening briefs to be filed by June 10, 2013. Since the issues raised in the *NYMIR DJ Action* are essentially the same as those presented in the *City of Peekskill Third-Party DJ Action*, we respectfully request that NYMIR also be permitted to file its motion for summary judgment in the *NYMIR DJ Action* at the same time as the summary judgment motions in the *City of Peekskill Third-Party DJ Action*.

The Court will hold a

conference on July 16, 2013, at 2:30
to address the putative summary
judgment motion.

RJN/asd

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Respectfully submitted,

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RICHARD J. NICOLELLO (RN4619)

So ordered
6/11/13

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